



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Plaintiff,

v.

ADVANCED ENVIRONMENTAL TECHNOLOGY *secondary*
CORPORATION; *referred*
ADVANCE FIBER TECHNOLOGIES CORPORATION
on behalf of JONATHAN TEMPLE, INC.;
AIR PRODUCTS & CHEMICALS, INC.;
ALADDIN TRANSPARENT PACKAGING,
a division of BLEYER
INDUSTRIES, INC.;
ALLIED COLLOIDS, INC.;
ALLIED - SIGNAL INC., on behalf of
FISHER SCIENTIFIC COMPANY;
ALPHA METALS, INC.;
ALUMINUM SHAPES, INC.;
AMERADA HESS CORPORATION;
AMERICAN CYANAMID COMPANY, INC., on its
own behalf and on behalf of
SHULTON INC.;
AMERICAN HEALTH FOUNDATION;
AMERICAN HOME PRODUCTS, on behalf of
BOYLE MIDWAY HOUSEHOLD
PRODUCTS INC., WHITEHALL
LABORATORIES AND WYETH
LABORATORIES, INC.;
AMERICAN NATIONAL CAN COMPANY, on
behalf of NATIONAL CAN
CORPORATION;
THE AMERICAN THREAD COMPANY;
ANCO PACKAGING, (a division of
CCL PRODUCTS IDENTIFICATION, INC.;)
ARISTECH CHEMICAL CORPORATION;
ASHLAND CHEMICAL INC., on behalf of
ASHLAND CHEMICAL CO.;
ATOCHEM NORTH AMERICA, INC., on
behalf of PENNWALT CORPORATION
and M & T CHEMICALS INC.;
AVNET, INC., on behalf of CHANNEL MASTER;
BARR LABORATORIES, INC.;
BASF CORPORATION, on its own behalf
and on behalf of QUANTUM INC.
and INMONT INC.;

CIVIL ACTION NO.

CONSENT DECREE

10/29/91 -

THE BATES MANUFACTURING COMPANY;)
BAXTER HEALTHCARE CORPORATION, INC.,)
on behalf of)
SCIENTIFIC PRODUCTS DIVISION;)
BECTON DICKINSON AND COMPANY, on)
behalf of IVERS-LEE, a division)
of BECTON DICKINSON AND COMPANY;)
BELZONA AMERICA on behalf of)
BELZONA MOLECULAR, INC.;)
BEROL CORPORATION;)
BIG THREE INDUSTRIES, INC.;)
BORDEN, INC., on behalf of)
FABRIC LEATHER COMPANY;)
BRIDGESTONE/FIRESTONE, INC., on behalf)
of FIRESTONE;)
BRISTOL-MEYERS PRODUCTS, a division of)
BRISTOL-MEYERS SQUIBB COMPANY;)
BROWNING FERRIS INDUSTRIES CHEMICAL)
SERVICES INC.;)
C.R. GIBSON COMPANY;)
CADBURY BEVERAGES, INC., on behalf)
of CANADA DRY;)
CANRAD INC., on behalf of)
CANRAD - HANOVIA, INC.;)
CARGILL, INCORPORATED;)
CHARLES OF THE RITZ GROUP LTD.;)
CHEM SYSTEMS, INC.;)
CHEMICAL LEAMAN TANK LINES, INC.;)
CHEMICAL WASTE MANAGEMENT INC., on behalf)
of GAESS ENVIRONMENTAL SERVICES,)
EARTHLINE COMPANY, R & R SANITATION)
and SCA CHEMICAL SERVICES;)
CINCINNATI MILACRON, INC., on behalf)
CINCINNATI MILACRON CHEMICAL, INC.;)
COLLOIDS INC., on behalf of)
CELLATE INC.;)
CONGOLEUM CORPORATION;)
CONSOLIDATED FREIGHTWAYS CORPORATION)
OF DELAWARE;)
CONTROLOTRON CORPORATION;)
COSMAIR, INC.;)
CUNO INCORPORATED;)
CUSTOM DISPOSAL;)
DOCK RESINS CORPORATION;)
DRAGOCO, INC.;)
E.I. DUPONT DE NEMOURS AND COMPANY;)
EASCO ALUMINUM on behalf of)
ALUMINUM BILLETS DIVISION;)
ENGELHARD CORPORATION;)
FAIRCHILD INDUSTRIES, INC;)
J. FILIBERTO SANITATION, INC.;)
FINITE INDUSTRIES, INC.;)

FOSROC INC., on behalf of)
PRECO INDUSTRIES LTD.)
THE FOXBORO COMPANY, on behalf of)
FOXBORO-WILKS;)
FRENCH COLOR & CHEMICAL CO.;)
GAF CORPORATION;)
E.J. GAISSER, INC.)
GANES CHEMICAL INC.;)
GENERAL ELECTRIC COMPANY; on its own)
behalf and on behalf of RCA)
CORPORATION-NEW PRODUCTS DIVISION;)
GENERAL INSTRUMENT CORPORATION;)
GENERAL MILLS, INC., on its own behalf)
and on behalf of GENERAL MILLS)
CHEMICALS, INC.;)
GEORGE A. MILTON CAN COMPANY;)
GOODREN PRODUCTS;)
GRAPHIC COLOR PLATE, INC.;)
HM HOLDINGS, INC., on behalf of)
SCM CORPORATION;)
HALOCARBON PRODUCTS CORPORATION;)
HATCO CORPORATION;)
HEINEMANN ELECTRIC COMPANY;)
THE HEMINWAY & BARTLETT MANUFACTURING)
CO., INC.;)
HENKEL CORPORATION AND UNION)
CARBIDE CORPORATION, on behalf)
of AMCHEM, INC.;)
HOECHST CELANESE CORP., on behalf of)
AMERICAN HOECHST CORPORATION,)
AZO PLATING, CELANESE CORPORATION)
and HOECHST-ROUSSEL)
PHARMACEUTICALS INC.;)
HOFFMAN-LA ROCHE, INC.;)
ICI AMERICAS INC., on behalf of)
CONVERTERS INK COMPANY;)
I.T.T. RAYONIER, INC.;)
INTERNATIONAL FLAVORS & FRAGRANCES,)
INC.;)
INTERNATIONAL PAPER COMPANY, on its own)
and on behalf of ARVEY CORPORATION;)
J.T. BAKER INC. on behalf of)
J.T. BAKER CHEMICAL COMPANY;)
JOHNSON & JOHNSON, on its own)
behalf and on behalf of)
PERMACEL, INC.;)
and ORTHO DIAGNOSTIC, INC.;)
KAISER ALUMINUM & CHEMICAL)
CORPORATION;)
KEWANEE INDUSTRIES GROUP, on behalf)
of U.S. PRINTING INK CORPORATION)
and ONYX CHEMICAL COMPANY;)
KIWI BRANDS INC., on behalf of)
KIWI POLISH COMPANY;)

KRAFT GENERAL FOODS, INC., on behalf of
GENERAL FOODS CORPORATION
(MAXWELL HOUSE DIV.)
THE KRAISSL COMPANY, INC.;
L.A. DREYFUS COMPANY;
LEHN & FINK PRODUCTS, a division of
STERLING DRUGS INC.,
LILLY INDUSTRIAL COATINGS COMPANY,
INC.;
LINDEN WAREHOUSE AND DISTRIBUTION CO.,
on behalf of LINDEN WAREHOUSE
CO., INC.;
LITTON SYSTEMS, INC., on behalf of
KESTER SOLDER DIVISION;
MALLINCKRODT, INC.; on behalf
of MALLINCKRODT CHEMICAL WORKS.;
MARISOL, INC.;
MARS, INCORPORATED - M&M/MARS DIVISION
THE MENNEN COMPANY A NEVADA CORPORATION;
MERCER MEDICAL CENTER;
MERCK & CO., INC., on its own
behalf and on behalf of CALGON
CORPORATION;
MERCURY PLASTIC BAG, INC.;
MINE SAFETY APPLIANCES COMPANY; on its own
behalf and on behalf of CALLERY
CHEMICAL COMPANY;
MINIGRIP, INC.;
MINNESOTA MINING & MANUFACTURING
COMPANY (3M);
MOBIL OIL CORPORATION;
MONSANTO COMPANY;
MONTEDISON USA, INC.;
MORENG METAL PRODUCTS, INC.; on behalf of
JOSEPH MORENG IRON WORKS, INC.;
MORTON INTERNATIONAL INC.; on behalf of
MORTON THIOKOL, INC., BEE CHEMICAL
COMPANY and THIOKOL CORP., CHEMICAL
DIVISION;
NATIONAL STARCH & CHEMICAL COMPANY,
on its own behalf
and on behalf of PERMABOUND
INTERNATIONAL DIVISION AND
NATIONAL ADHESIVES;
NITE-BRITE SIGN CO., INC.;
NORTON COMPANY;
OAKLEY SERVICE, INC.;
OCCIDENTAL CHEMICAL CORPORATION, on
behalf of DIAMOND SHAMROCK CHEMICAL
CO.;
OLIN HUNT SPECIALTY PRODUCTS INC.;
PANELGRAPHIC CORPORATION;

PENICK CORPORATION;
PENNSYLVANIA NATIONAL INSURANCE CO., on
 behalf of LIGHTMAN DRUM
 COMPANY, INC.;
PERFECT FINISHING CO., INC.;
PFIZER INC.;
PHARMACIA, INC.;
PILOT LABORATORIES, INC.;
PROCESS RESEARCH & DEVELOPMENT
 COMPANY, on behalf of HALCON
 RESEARCH & DEVELOPMENT CORPORATION;
QUALITY HOUSE OF GRAPHICS, INC.;
RADIAC RESEARCH CORPORATION;
RAPID DISPOSAL SERVICE, INC;
REICHHOLD CHEMICALS, INC., on its
 own behalf and on behalf of
 CELLOFILM CORPORATION AND STANDARD
 BRANDS CHEMICAL INDUSTRIES, INC.;
REXHAM CORPORATION;
RHEIN CHEMIE CORPORATION, on behalf of
 NASSAU CHEMICAL CORPORATION;
RHONE - POULENC INC., on behalf of
 STAUFFER CHEMICAL COMPANY;
ROWE INTERNATIONAL INC.;
RUTGERS, THE STATE UNIVERSITY;
S & W WASTE, INC.;
SCOTT PAPER COMPANY;
SEALED AIR CORPORATION;
SEQUA CORPORATION on behalf of
 SUN CHEMICAL AND SUN
 CHEMICAL CORP. - FACILE DIVISION;
SPEX INDUSTRIES, INC.;
STANDARD T CHEMICAL COMPANY, INC.,
 on behalf of STANDARD TANK
 CHEMICAL COMPANY;
STONHARD, INC.;
STRANAHAN FOIL COMPANY, INC.;
STREBOR INC., on behalf of J.B. WILLIAMS
 COMPANY, INC.
SYBRON CHEMICALS INC., on behalf of
 IONAC CHEMICAL COMPANY;
TEMPO INSTRUMENT, INC.;
TENNECO POLYMERS, INC., on behalf of
 TENNECO RESINS, INC.;
TEXACO, INC.;
THE UPJOHN COMPANY;
USG CORPORATION, on behalf of
 DURABOND PRODUCTS COMPANY;
THOMAS ELECTRONICS, INC.;
UNION CARBIDE CORPORATION;
VWR CORPORATION, on behalf of
 VWR SCIENTIFIC;

W.N. STEVENSON COMPANY;)
WALKER PRISMATIC ENGRAVING)
CORPORATION;)
WARNER LAMBERT COMPANY, on its own)
behalf and on behalf of)
WARNER CHILCOTT LABS/)
WARNER CHILCOTT;)
WESTERN UNION CORPORATION on behalf of)
WESTERN UNION TELEPROCESSING, INC.;)
WESTINGHOUSE ELECTRIC CORPORATION;)
WHATMAN SPECIALTY PRODUCTS, INC., on)
behalf of WHATMAN, INC.;)
WITCO CORPORATION;)
Defendants.)

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I

BACKGROUND

WHEREAS, the Parties intend to attain a degree of cleanup of hazardous substances, pollutants and contaminants and control further releases which at a minimum assures protection of human health and the environment with respect to the source of contamination at the Site addressed by the Work required under this Consent Decree.

WHEREAS, in accordance with Section 121(d)(1) of CERCLA, 42 U.S.C. §9621(d)(1), the Parties agree that the remedial action plan adopted by the United States Environmental Protection Agency ("EPA") and embodied herein will attain a degree of cleanup of waste materials released at the Site and control of further releases that assures protection of human health and the environment at the Site.

WHEREAS, the Settling Defendants agree that nothing in this Consent Decree, the SOW, any Remedial Action Work Plans, or any Remedial Design or Additional Work which may be approved by EPA, constitutes a warranty or representation of any kind by Plaintiff that compliance with this Consent Decree will achieve the performance standards set forth in the ROD and SOW and that such compliance shall not foreclose Plaintiff from seeking performance of all terms and conditions of this Consent Decree including the applicable performance standards.

WHEREAS, the Chemical Control Site consists of the approximately two and two-tenths (2.2) acre parcel of real property located at 23 South Front Street on Block 4, Lots 1438, 1438C, and 1438D in the City of Elizabeth, Union County, New Jersey; and a portion of the adjacent Elizabeth River into which Waste Materials, from Block 4, Lots 1438, 1438C, and 1438D may have come to be located.

WHEREAS, the surrounding area is mostly industrial; however, approximately 100,000 people live within a three (3) mile radius of the Site. The Elizabeth River and the nearby Arthur Kill are used for commercial and recreational boating. Although fishing is prohibited, recreational fishing is still ongoing.

WHEREAS, the Chemical Control Corporation plant (the "plant") was located on a portion of the Site and was utilized to reprocess, reclaim, recover, blend, incinerate and treat waste materials.

WHEREAS, in December of 1978, an inventory conducted by NJDEP indicated that approximately 50,000 drums were present at the plant. They were stocked in tiers of up to five levels high, and were leaking and discharging waste materials into the Elizabeth River.

WHEREAS, in 1978, Chemical Control Corporation was placed into operational receivership by the Superior Court of New Jersey for failure to comply with an NJDEP order to correct environmentally unsound business operations.

WHEREAS, on April 21, 1980, prior to the completion of an NJDEP Site remediation program, a fire broke out at the plant. The fire burned for approximately one day.

WHEREAS, as a result of the increased runoff of contamination into the Elizabeth River, resulting from the fire and the necessary fire fighting activities, commercial fishing, crabbing and shell fishing were banned.

WHEREAS, NJDEP in cooperation with the United States Coast Guard performed post-fire response activities which included: the disposal of 250,000 gallons of bulk liquids; the construction of a dike to prevent further runoff into the Elizabeth River; the treatment of contaminated surface water; the demolition of remaining buildings; and the construction of a groundwater treatment system.

WHEREAS, the response action was initially funded by the New Jersey Spill Compensation Fund provisions of the New Jersey Spill Compensation and Control Act, N.J.S.A. § 58:10-23.11 et seq. In October 1980, EPA and the U.S. Coast Guard authorized Clean Water Act Section 311(k) monies under the provisions of 33 U.S.C. § 1321(k) to reimburse the State for costs incurred in conducting the response action. The State was ultimately reimbursed \$3,848,490.22 the costs incurred in conducting the response action;

WHEREAS, in 1983 a State Superfund Contract was signed by the EPA and the NJDEP. The Scope of Work (SOW) for the contract identified remedial actions that remained to be completed at the Site and called for the EPA to perform a Remedial Investigation/Feasibility Study (RI/FS).

WHEREAS, pursuant to Section 105 of CERCLA 42 U.S.C. § 9605, EPA placed the Chemical Control Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070.

WHEREAS, EPA performed an Initial Remedial Measure (IRM), which constitutes a "Removal Action" within the meaning of 42 U.S.C. § 9604, to mitigate the remaining immediate hazards at the Site. The IRM included: the removal and decontamination of eleven box trailers and one vacuum truck used by New Jersey and left onsite; the repairing of the storm sewer at South Front Street; and the search, recovery, and disposal of drums and cylinders deposited in the Elizabeth River. The final phase of the IRM involved the sampling and disposal of the gas cylinders. As a result of these measures part of the Site is surrounded by a security fence, a one to three foot thick layer of gravel covers part of the Site, and an earthen berm separates part of the Site from the Elizabeth River.

WHEREAS, in July of 1986 EPA completed the Remedial Investigation (RI). The RI determined that soils at the Site were highly contaminated with a variety of organic chemicals, acids and base/neutrals, and with metals: including benzene, toluene, 1,1,1-trichloroethane, lead, cadmium, arsenic, and PCBs all of which are hazardous substances pursuant to Section

101(22) of CERCLA, 42 U.S.C. § 9601 (22). It also found that the groundwater was contaminated with similar chemicals. The investigation of the Elizabeth River revealed that some of the river contaminants were attributable to releases due to activities at the Site.

WHEREAS, the RI's evaluation of risks to human health associated with the contamination in the subsurface soil and the groundwater indicated that the greatest potential of risk from the Site is associated with the possible exposure to the contaminated soils through direct contact and fugitive dust emissions. Contact with the sediments of the Elizabeth River and Arthur Kill would expose an individual to potentially dangerous levels of contamination. Despite State imposed restrictions on shell fishing, recreational fishing continues.

WHEREAS, the RI concluded that the remedial action for the Site should reduce the mobility and toxicity of the contaminants in the soil and that the Site should be returned to a condition that is compatible with future development.

WHEREAS, on July 2, 1987 EPA made available to the public for comment the Proposed Remedial Action Plan, (PRAP) which identified EPA's preferred remedial alternative. This preferred alternative was selected from the Feasibility Study (FS) performed by EPA at the Site.

WHEREAS, a public meeting was held on August 6, 1987 to present the FS and PRAP reports and to solicit public input.

II

JURISDICTION

For purposes of entry and enforcement of this Consent Decree and enforcement of the Settling Defendants' Internal Agreement only, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1345, 42 U.S.C. §6973, and 42 U.S.C. §§9606, 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants who are signatories to this Consent Decree, and who, solely for purposes of this Consent Decree and the underlying complaint, hereby waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District. Venue is proper in this District. The Settling Defendants, by their signatures of this Consent Decree, acknowledge service of process of the complaint in this action and expressly waive all objections to service of process. With respect to matters other than jurisdiction and venue, nothing in this paragraph shall be construed to limit or otherwise waive rights reserved in other paragraphs of this Consent Decree. Subject to Paragraph P of Section XIX of this Consent Decree, Settling Defendants agree that the Complaint filed in this action states claims upon which relief may be granted.

III

PURPOSE OF CONSENT DECREE

The objective of the Parties in entering into this Consent Decree is to protect public health, welfare and the environment from releases or threatened releases of Waste Materials, as that term is defined herein, from the Chemical Control Site. The Parties intend to further the public interest by an expeditious completion of the remedial action required at the Chemical Control Site and by avoiding prolonged and costly litigation between the Parties.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED:

IV

PARTIES BOUND

A. This Consent Decree applies to and is binding upon the undersigned Parties and their officers, employees, and agents, in their capacities as representatives of the Settling Defendants, and their successors and assigns.

B. No change in corporate status shall in any way alter the Settling Defendants' responsibilities under this Consent Decree. Each Settling Defendant shall be responsible and shall remain responsible for carrying out all activities required of that particular Settling Defendant under Paragraph A of Section VII of this Consent Decree.

C. In the event of the inability to pay or insolvency of any one or more of the Settling Defendants, or in the event that for any other reason one or more of the Settling Defendants do not participate in the implementation of this Consent Decree the remaining Settling Defendants shall complete the work and all applicable requirements of this Consent Decree.

V

DEFINITIONS

Unless noted to the contrary, the terms of this Consent Decree shall have the same meaning assigned to them by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601 et seq., and the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq. Whenever the following terms are used in this Consent Decree and Attachments, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.

B. "Chemical Control Site" or "Site" shall consist of the approximately two and two-tenths (2.2) acre parcel of real property located at 23 South Front Street on Block 4, Lots 1438, 1438C, and 1438D in the City of Elizabeth, Union County, New Jersey; and a portion of the adjacent Elizabeth River into which Waste Materials, from Block 4, Lots 1438, 1438C and 1438D may have come to be located.

C. "Contractor" shall mean the company or companies retained by the Settling Defendants to perform any of the Work required by this Consent Decree.

D. "Day" shall mean calendar day, unless otherwise provided herein.

E. "EPA" shall mean the United States Environmental Protection Agency.

F. "Fund" shall mean the Hazardous Substance Superfund, created pursuant to Section 9507 of the Internal Revenue Code of 1986, 26 U.S.C. §9507.

G. "Future Liability" shall mean any and all liability arising after EPA issues its Certification of Completion of the Work pursuant to Paragraph I in Section XIX.

H. "Hazardous Substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

I. "National Contingency Plan" or "NCP" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. §9605.

J. "NJDEP" shall mean the New Jersey Department of Environmental Protection.

K. "Operation and Maintenance" or "O&M" shall mean those activities required by Section F of the Statement of Work, as may be modified pursuant to the provisions of this Consent Decree and its required schedules, plans or reports.

L. "Paragraph" shall mean a component of a Section in this Consent Decree which is identified by a capital letter.

M. "Parties" shall mean the Plaintiff, United States of America, and the Settling Defendants.

N. "Past Costs" shall mean those costs incurred by the United States prior to lodging of this Consent Decree.

O. "Plaintiff" shall mean the United States of America.

P. "Pre-Certification Future Costs" shall mean the sum of Settling Defendants' Pre-Certification Future Costs, as defined in Paragraph CC of this Section and the United States' Pre-Certification Future Costs, as defined in Paragraph II of this Section.

Q. "Primary Settling Defendants" shall mean those Settling Defendants listed in Exhibit A to this Consent Decree.

R. "PRP" shall mean any party who, pursuant to 42 U.S.C. §9601 et. seq., is potentially responsible for the release or threatened release of Waste Materials at the Chemical Control Site.

S. "Record of Decision" or "ROD" shall mean that document issued by EPA on September 23, 1987 and all attachments thereto, in which the remedial action plan for the Site was selected by the Regional Administrator of EPA, Region II, to address the release and threat of release of hazardous substances, pollutants, or contaminants at and from the Site.

T. "Records" or "Documents" shall mean any documents, writings, reports, correspondence, lab reports, technical reports and all tangible things of any type on which information exists which relates to this Consent Decree or the Work to be performed pursuant to this Consent Decree.

U. "Remedial Construction" shall mean those activities required by Section E of the SOW, as may be modified pursuant to the provisions of this Consent Decree and its required schedules, plans or reports.

V. "Remedial Design" shall mean those activities required by Sections C and D of the SOW, as may be modified pursuant to the provisions of this Consent Decree and its required schedules, plans or reports.

W. "Remedy" shall mean the selected remedial alternative set forth in the Record of Decision as described in Paragraph A of Section VII, infra, and as shall be developed and/or implemented pursuant to this Consent Decree and/or any modifications to the selected remedial alternative set forth in the Record of Decision pursuant to Paragraph C of Section VII of this Consent Decree.

X. "Response Costs" shall mean the costs of "response," as defined in Section 101(25) of CERCLA 42 U.S.C. §9601(25) incurred by the United States relating to the Chemical Control Site.

Y. "Secondary Settling Defendants" shall mean those Settling Defendants listed in Exhibit B to this Consent Decree.

Z. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

AA. "Settling Defendants" shall mean all PRPs who execute this Consent Decree.

BB. "Settling Defendants' Internal Agreement" shall mean that document attached to this Consent Decree as Exhibit D.

CC. "Settling Defendants' Pre-Certification Future Costs" shall mean only those costs incurred by Settling Defendants, after the lodging of this Consent Decree, in performing the Remedial Design and Remedial Construction, including project management and reporting requirements under this Consent Decree, which are incurred prior to EPA Certification of Completion of Remedial Construction pursuant to Paragraph H of Section XIX of this Consent Decree. Settling Defendants' Pre-Certification Future Costs shall not include any costs relating to legal expenses, nor any costs incurred by Settling Defendants as a result of their failure to comply with the requirements of this Consent Decree.

DD. "Statement of Work" or SOW shall mean the document which is attached to this Consent Decree, labeled Attachment II, and which describes the activities which the Primary Settling Defendants are required to perform pursuant to this Decree.

EE. "State" shall mean the State of New Jersey.

FF. "SWDA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq.

GG. "Total Pre-Certification Costs" shall mean the sum of Past Costs and Pre-Certification Future Costs, and shall constitute the cost basis for purposes of Settling Defendants' payment pursuant to Paragraph D of Section XIV of this Consent Decree.

HH. "United States" shall mean the United States of America and its agencies and departments.

II. "United States' Pre-Certification Future Costs" shall mean only those costs incurred by the United States in performing oversight or verification of Settling Defendants' activities after the lodging of this Consent Decree in performing the Remedial Design and Remedial Construction, which are incurred prior to EPA Certification of Completion of Remedial Construction pursuant to Paragraph H of Section XIX of this Consent Decree.

JJ. "Waste Material" shall mean any substance which meets the definition of any one or more of the following:

- (1) a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14); or
- (2) a "pollutant or contaminant" as those terms are defined in Section 101(33) of CERCLA, 42 U.S.C. §9601(33); or
- (3) a "hazardous waste" as that term is defined in Section 1004(5) of SWDA, 42 U.S.C. §6904(5).

KK. "Work" shall mean all work and other activities required by this Consent Decree to be performed by Primary Settling Defendants, including, but not limited to, Remedial Design, Remedial Construction and Operation and Maintenance of the Remedy.

VI

STATEMENT OF FACTS

The United States of America ("United States"), on behalf of the Administrator of EPA, filed a Complaint in this matter against the Settling Defendants. The Complaint was filed concurrently with the lodging of this Consent Decree pursuant to CERCLA, as amended, 42 U.S.C. §9601 et seq. The Complaint demands that the Settling Defendants reimburse the United States for Response Costs incurred by the United States in addressing the releases or threatened releases of hazardous substances, pollutants or contaminants at the Chemical Control Site. It also demands that the Settling Defendants conduct all activities necessary to implement the provisions of the ROD and perform the remedial design and remedial actions in response to the releases and threatened releases of hazardous substances, pollutants or contaminants into the environment at and from the Chemical Control Site.

Pursuant to Sections 121 and 122 of CERCLA, 42 U.S.C. §§9621 and 9622, the United States and the Settling Defendants have stipulated and agreed to the making of this Consent Decree prior to the taking of any testimony, and in settlement of the claims raised in the Complaint.

The United States has notified the State of the negotiations with the PRPs regarding the implementation of the remedial action for the Site, and has provided the State with an opportunity to participate in such negotiations and be a party to the settlement.

On September 23, 1987, the Regional Administrator of EPA Region II issued a Record of Decision, which documents the selection of the remedial action plan for the cleanup of the Site, discusses EPA's reasons for adopting such plan, and responds to each of the comments to the PRAP. An in-situ fixation remedy was selected as a permanent remedy for the Site.

The selected remedy involves treating the approximately 18,000 cubic yards of contaminated soil with fixation chemicals thereby creating a solid matrix that will have extremely low permeability. The remedy also includes: repairing the berm that separates the Site from the Elizabeth River; removing debris remaining from previous response activities; and sealing the sanitary sewer line under the Site where it connects with the South Front Street storm sewer. In addition, a monitoring program will determine the effectiveness of the remedy.

The remedial action plan adopted by EPA in the ROD is in accordance with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

Settling Defendants agree to implement the remedial action plan for the Site which was adopted by EPA in the ROD. EPA has determined that the Work required under this Consent Decree will be done properly by Settling Defendants, and that Settling Defendants are capable of implementing the remedial action plan designated in the ROD.

VII

WORK TO BE PERFORMED

A. Commitments of Settling Defendants

1. Primary and Secondary Settling Defendants are jointly and severally responsible for and shall finance the Remedy. Primary Settling Defendants are jointly and severally responsible for and shall design, construct, operate and maintain the Remedy in accordance with all terms, conditions and schedules set forth, developed and approved under this Consent Decree.

2. The ROD, along with any amendments which may be adopted pursuant to Paragraph C of this Section ("Additional Work"), is attached hereto as Attachment I and is hereby incorporated by reference into this Consent Decree.

3. The Statement of Work ("SOW") for the completion of Remedial Design, Remedial Construction and Operation and Maintenance at the Site is attached hereto as Attachment II and is hereby incorporated by reference into this Consent Decree. All provisions and schedules of the SOW are enforceable as part of this Consent Decree.

4. The activities the Primary Settling Defendants agree to perform include, but are not limited, to the following:

- a. Identify and retain a qualified Project Coordinator as set forth in Paragraph B., below.
- b. Implement the Remedy selected for the Site, as set forth below:
 - (i) The treatment of contaminated soil at the Site using in-situ fixation;
 - (ii) The removal of debris remaining from earlier response actions, including drill cuttings, monitoring well development water, items recovered from the Elizabeth River under the interim remedial measure, used disposable equipment and the decontamination pad;
 - (iii) The sealing of the sanitary sewer line under the Site where it connects to the South Front Street storm sewer;

- (iv) The repairing of the berm that separates the real property comprising a portion of the Site from the Elizabeth River; and
- (v) The collecting and analyses of environmental samples to ensure the effectiveness of the Remedy.
- c. Perform all Remedial Design, Remedial Construction and O&M activities as required by the SOW and other activities as approved by EPA and as needed to implement the Remedy.
- d. Perform all Work required by this Consent Decree in accordance with the standards, specifications and time periods set forth in this Consent Decree, the SOW, and in the ROD.
- e. Within seven (7) days of the date of lodging of this Consent Decree with the Court, commence those tasks required by Sections B, C, and D of the SOW. Complete those tasks in accordance with those schedules set forth in or developed and approved under the SOW.
- f. Prepare schedules pursuant to the SOW which shall express schedule dates in terms of periods of time following prerequisite events, rather than as calendar dates. The entry of this Consent Decree by the Court shall be deemed a prerequisite event for activities conducted pursuant to Sections E and F in the SOW.

B. Identification of Project Coordinator

1. Within ten (10) days of the date on which this Consent Decree is lodged by the Court, Primary Settling Defendants shall designate a Project Coordinator and shall provide EPA in writing with the name, address, phone number and qualifications of the Project Coordinator and an alternate Project Coordinator. The Project Coordinator shall be responsible for the day to day management of all of the Work to be performed pursuant to this Consent Decree. The Project Coordinator shall not be an attorney engaged in the practice of law. The Project Coordinator shall have adequate technical and managerial experience to manage all Work under this Consent Decree including the status of all activities relating to the Site. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Consent Decree. The Project Coordinator shall be the primary contact for EPA on all matters relating to work at the Site. A Project Coordinator must be available for EPA to contact during all working days until this Consent Decree is terminated. The Project Coordinator must be retained by the Primary Settling Defendants at all times until this Consent Decree is terminated.

2. Written notice by EPA to the Project Coordinator will be deemed notice to the Settling Defendants for all matters relating to the Work under this Consent Decree.

3. Selection of the Project Coordinator shall be subject to approval by EPA in writing which approval shall not be unreasonably withheld. EPA must receive at least five (5) working days prior written notice of any change in the Project Coordinator. All changes in the Project Coordinator shall be subject to EPA approval.

C. Additional Work

1. If EPA determines or if Primary Settling Defendants determine that additional work, including additional Remedial Design, additional Remedial Construction, and/or additional response action (collectively "Additional Work"), is necessary to protect human health or the environment and to meet the requirements of the ROD and the SOW, written notice of such Additional Work shall be provided by EPA or the Primary Settling Defendants. Any such Additional Work which Primary Settling Defendants determine to be necessary is subject to approval by EPA in accordance with the procedures set forth in Paragraph C.3 of this Section.

2. If EPA determines or if Primary Settling Defendants determine that Additional Work beyond the ROD and the SOW is necessary, written notice of such Additional Work shall be provided by EPA or the Primary Settling Defendants. Upon the written mutual agreement of EPA and the Primary Settling Defendants, such Additional Work shall be implemented by the Primary Settling Defendants upon approval by EPA, in accordance with the procedures set forth in Paragraph C. 3. of this Section.

3. Additional Work within Paragraphs C.1, or C.2 of this Section may be incorporated in this Consent Decree and shall be implemented by the Primary Settling Defendants as a requirement of this Consent Decree in accordance with the following procedures:

a. Unless otherwise notified in writing by EPA, Primary Settling Defendants shall submit a work plan, which shall include a schedule for implementation of the Additional Work, to EPA within thirty (30) days of receipt of the written notice referred to in Paragraph C.1 of this Section, or the written mutual agreement referred to in Paragraph C.2. of this Section.

b. EPA shall approve or disapprove the work plan, consistent with the requirements of this Consent Decree.

c. If EPA disapproves the work plan, Primary Settling Defendants shall submit to EPA a revised work plan pursuant to the provisions of Section X of this Consent Decree.

d. Upon approval by EPA, any new or revised work plan for Additional Work shall be incorporated by reference into this Consent Decree, and shall be implemented by Primary Settling Defendants. A failure

to comply with the new or revised work plan shall be deemed a violation of this Consent Decree.

4. Any Additional Work beyond the ROD and the SOW may not be incorporated into this Consent Decree except in accordance with this Paragraph; provided however that nothing in this Paragraph shall be construed to relieve the Settling Defendants of their obligations to meet and maintain compliance with the requirements of this Consent Decree, nor impair the rights of EPA pursuant to the reservations in Paragraphs B and C of Section XXIII, Reservation of Rights, to require additional work in a subsequent judicial or administrative action.

5. This requirement that Additional Work be performed pursuant to this Paragraph shall not be deemed a modification subject to Paragraph C of Section XXV of this Consent Decree.

VIII

EPA PROJECT MANAGER

A. Within ten (10) days of the date on which this Consent Decree is lodged by the Court, EPA shall designate a Project Manager to monitor the progress of the Work and to coordinate communication between EPA and the Settling Defendants. The EPA may also designate an alternate representative. EPA will communicate the name of its Project Manager in writing to the Settling Defendants Project Coordinator.

B. The EPA Project Manager shall have the authority lawfully vested in the Project Manager by the National Contingency Plan, 40 C.F.R. Part 300, or any similar provision in any amendments or revisions to the NCP.

C. The EPA Project Manager shall have the authority to require a cessation of the performance of the Work or any other activity at the Site that, in the opinion of the EPA Project Manager, may present or contribute to an endangerment of public health, welfare, or the environment or may cause or threaten to cause the unauthorized release of waste materials from the Site. Any dispute between the Primary Settling Defendants and the EPA Project Manager over the propriety of the suspension of the Work may be resolved promptly through expedited dispute resolution by notice of a written statement of the issues in dispute to the Director of the Emergency and Remedial Response Division, EPA Region II, or his or her authorized representative. Within five (5) days of such notice, the Parties shall confer. Should informal negotiations fail, then the issue may be referred to this Court for resolution. If the EPA Project Manager suspends the Work or any other activity at the Site, EPA may extend the compliance schedule of this Consent Decree, as appropriate, for a period of time equal to the time of the suspension of Work or other activities plus reasonable additional time for resumption of activities. EPA shall notify Settling Defendants in writing of any extension of time, and such extension shall not be unreasonably withheld.

D. The EPA Project Manager may authorize field modifications to the studies, designs, techniques, or procedures undertaken or utilized in performing the Work required under this Consent Decree, provided that any such modifications are consistent with the ROD and the SOW attached to this Consent Decree. All such modifications must be in a writing signed by the EPA Project Manager. Such field modifications shall not be deemed a modification subject to Paragraph C in Section XXV of this Consent Decree. Field modifications within the scope of the SOW, do not require the submission and approval of work plans and are not to be classified as Additional Work.

E. The EPA Project Manager does not have the authority to modify, in any way, the terms of this Consent Decree.

F. EPA and the Primary Settling Defendants shall have the right to change their designated representatives by notifying the other Party in writing. A change in the Primary Settling Defendants' Project Coordinator, however, is subject to prior notice to EPA and approval in writing by EPA consistent with Paragraph B.3 of Section VII of this Consent Decree.

G. The EPA Project Manager may assign other representatives, including but not limited to other EPA employees, contractors and subcontractors, to serve as his representative for oversight of performance of daily operations during implementation of the Work.

H. The absence of the EPA Project Manager from the Site shall not delay or stop any portion of the remedial action.

IX

PROGRESS REPORTS

A. Primary Settling Defendants shall submit to EPA monthly written progress reports by the tenth day of each month following the date of entry of this Consent Decree until EPA Certification of Completion of Remedial Construction pursuant to Paragraph H of Section XIX of this Consent Decree. Thereafter, Primary Settling Defendants shall submit progress reports to EPA quarterly. Each progress report shall include, at least, the following:

1. A description of all actions which have been taken toward achieving compliance with this Consent Decree during the prior month or other period covered by the report;

2. A description of any violations of this Consent Decree alleged by EPA and other problems encountered during the prior month or other period covered by the report;

3. A description of all corrective actions taken in response to any violations alleged by EPA or problems which occurred during the prior month or other period covered by the report;

4. The results of any sampling, test results, and other data which has been validated in accordance with the approved Quality Assurance Project Plan which are received or generated by Primary Settling Defendants during the course of implementing the Work during the prior month or other period covered by the report;

5. A description of all plans, actions and data which are scheduled for the next two months or next two reporting periods;

6. A quantified estimate of the percentage of the Work completed as of the date of the progress report, and

7. An identification of all delays encountered or anticipated that may affect the future schedule for performance of the Work, and all efforts made by Primary Settling Defendants to mitigate delays or anticipated delays.

B. EPA will notify Settling Defendants in writing if EPA determines that a progress report is incomplete or deficient. Primary Settling Defendants shall make the necessary revisions and resubmit the revised progress report with the next scheduled progress report or, if the next scheduled progress report is due less than seven (7) days following Primary Settling Defendants' receipt of the notice of deficiency, with the subsequently scheduled progress report.

C. Primary Settling Defendants shall be deemed in violation of this Consent Decree if EPA determines that a revised progress report is deficient, except to the extent that the deficiency results wholly from the instructions received by EPA.

X

PLANS, REPORTS AND OTHER SUBMISSIONS REQUIRING EPA APPROVAL

A. If EPA approves any plan, report or other submission, EPA will so inform the Settling Defendants in writing. Any approval by EPA of any plans, reports or other submissions which are not in writing shall not be effective or binding upon EPA.

B. If EPA disapproves any plan, report or other item required to be submitted to EPA for approval pursuant to this Consent Decree, Primary Settling Defendants shall have thirty (30) days from the receipt of notice of such disapproval, plus any additional time EPA determines is necessary for field work, to correct any deficiencies and resubmit the plan, report or other item for approval, unless a longer period is specified in the notice. Any notice of disapproval from EPA shall include an explanation of why the plan, report or other item is being disapproved. Primary Settling Defendants must address each of EPA's comments and resubmit the previously

disapproved plan, report or other item along with the required changes to EPA within the period set forth above.

C. If EPA determines that any such plan, report, or other item required under this Consent Decree is not adequately revised by Primary Settling Defendants in the subsequent submittal, including a failure to correct any deficiencies identified by EPA, Primary Settling Defendants shall be deemed in violation of this Consent Decree, except to the extent that Primary Settling Defendants can demonstrate that their failure to adequately revise the plan, report or other item resulted wholly from the instructions received by EPA. In the event that a subsequent submittal or portion thereof is disapproved by EPA, EPA retains the right to amend or develop the submittal. Primary Settling Defendants shall implement any such submittal as amended or developed by EPA. Notwithstanding any notice of disapproval, Primary Settling Defendants shall, to the extent required by EPA, proceed to take all actions required by the non-deficient portions of the submission.

XI

DATA COLLECTION/QUALITY ASSURANCE

A. Primary Settling Defendants shall use quality assurance, quality control and chain of custody procedures in accordance with the QAPP(s) developed and approved pursuant to EPA's "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAM-005/80), "Data Quality Objective Guidance" (EPA/540/G87/003 and 004) and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Consent Decree, Primary Settling Defendants shall submit QAPP(s) to EPA that is/are consistent with the SOW, the National Contingency Plan and applicable guidelines. EPA, after review of Primary Settling Defendants' proposed QAPP(s) and the comments thereon, will notify the Settling Defendants of any required modifications, conditions precedent to approval, disapproval, or approval of the QAPP(s). Upon receipt of notification of disapproval, conditions precedent to approval or any need for modifications, Primary Settling Defendants shall make all required modifications in the QAPP(s). Sampling data generated consistent with the QAPP(s) shall be admissible as evidence, without objection, in any proceeding under Section XVI of this Decree. Primary Settling Defendants shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Primary Settling Defendants in implementing this Consent Decree. In addition, Primary Settling Defendants shall, as requested by EPA, have a designated laboratory analyze samples submitted by EPA for quality assurance purposes.

B. At the request of EPA, Primary Settling Defendants shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by Primary Settling Defendants pursuant to the implementation of this Consent Decree. Primary Settling Defendants shall notify EPA not less than fourteen (14) days in advance of any sample collection activity, unless emergency conditions do not permit

such notice, in which case Primary Settling Defendants shall provide EPA with as much notice as is reasonable under the circumstances. In addition, EPA shall have the right to take any additional samples from the Site that EPA deems necessary.

C. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations with respect to this Section XI, Data Collection/Quality Assurance.

XII

SITE ACCESS

A. The Primary Settling Defendants assume all responsibility for obtaining access for the Primary Settling Defendants and for authorized representatives of EPA and the State onto all areas located at and in the vicinity of the Site, as needed, to observe or perform all activities and implement all measures required by this Consent Decree.

B. The Primary Settling Defendants shall use their best efforts to secure from such persons access for Primary Settling Defendants and for authorized representatives of EPA and the State in order to implement the terms of this Consent Decree. "Best efforts" for the purposes of this Section include, but are not limited to, identifying and locating the owner(s) and/or lessees of areas onto which access is needed, offering reasonable consideration to the owners and/or lessees of areas in exchange for access, and making all other reasonable attempts to obtain access agreements. Costs incurred by the Primary Settling Defendants in obtaining access pursuant to this Paragraph shall be included in Pre-Certification Future Costs.

C. If the Primary Settling Defendants are unable to obtain access described in Paragraph B of Section XII, above, within forty-five (45) days after lodging of this Consent Decree, Primary Settling Defendants shall promptly notify the United States. The United States may thereafter assist in obtaining access. Primary Settling Defendants shall, in accordance with Section XIV herein, reimburse the United States for all costs incurred by it in obtaining access. Costs incurred by the United States in obtaining access pursuant to this Paragraph shall be included in Pre-Certification Future Costs.

D. From the date of entry of this Consent Decree until EPA certifies completion of the Work pursuant to Section XIX, the United States and its representatives, including EPA and its contractors, shall have access at all times to the Site and any property to which access is required for the implementation of this Consent Decree. This access shall be for the purpose of conducting any activity authorized by or related to this Consent Decree, including, but not limited to:

1. Monitoring the Work or any other activities taking place on the property;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for or planning and implementing additional response actions at or near the Site; and
6. Inspecting and copying records, operating logs, contracts or other documents generated by Primary Settling Defendants, and if applicable, Secondary Settling Defendants, or their agents;
7. Assessing Primary Settling Defendants' compliance with this Consent Decree.

E. The Settling Defendants agree not to interfere in any manner with any attempt by EPA or its representatives to enter or move about the Site for any purpose at any time. Upon the request of any EPA representative, the Primary Settling Defendants will facilitate and assist EPA representatives to enter and move about the Site and any property on which work is being performed under the terms of the Consent Decree.

F. EPA may designate the Primary Settling Defendants and their contractors as authorized representatives of EPA, pursuant to Section 104(e) of CERCLA, 42 U.S.C. §9604(e), for purposes of gaining access as needed to implement the terms of this Consent Decree. In the event that Primary Settling Defendants are so designated as an authorized representative of EPA, the Primary Settling Defendants agree to indemnify, save and hold harmless EPA and EPA representatives, as provided in Section XIX of this Consent Decree.

G. Notwithstanding any other provision of this Consent Decree, the United States retains all its access authorities and rights under CERCLA, SWDA and any other applicable statutes or regulations.

XIII

FINANCIAL ASSURANCE

A. Primary Settling Defendants shall demonstrate their ability to complete the Work and to pay all claims that arise in connection with performance of the Work by obtaining, and presenting to EPA for approval within thirty (30) days of the entry of this Consent Decree, one of the following: (1) performance bond; (2) irrevocable letter of credit; (3) guarantee by a third party, or (4) internal financial information

sufficient to satisfy EPA that Primary Settling Defendants have enough net assets to make it unnecessary to require additional financial assurances. EPA will make a determination of the adequacy of the financial assurance and will communicate that determination to Settling Defendants in writing.

R. If Primary Settling Defendants seek to demonstrate their ability to complete the Work by means of internal financial information, such financial information must be sufficient to demonstrate that the Primary Settling Defendants have a combined net worth of not less than one hundred million dollars. The Primary Settling Defendants may make such demonstration by utilizing their most recent audited financial statements, financial assurance information provided under SWDA or similar statute, or other existing information about the financial condition of the Primary Settling Defendants. Primary Settling Defendants shall resubmit certification that the combined net worth of the Primary Settling Defendants has not fallen below one hundred million dollars annually, on the anniversary of the effective date of this Consent Decree. If at any time the combined net worth of the Primary Settling Defendants falls below one hundred million dollars, Primary Settling Defendants shall, within thirty (30) days of receipt of notice of Plaintiff's determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed in Paragraph A., above.

C. Primary Settling Defendants must obtain written approval from EPA of the adequacy of their financial assurance in order to comply with the provisions of this Section.

XIV

REIMBURSEMENT OF UNITED STATES RESPONSE COSTS

A. Within sixty (60) days of entry of this Consent Decree, Settling Defendants shall reimburse EPA three hundred and seventy-five thousand dollars (\$375,000.00) towards satisfaction of their obligations to reimburse EPA for Past Costs.

B. Every year until EPA Certification of Completion of Remedial Construction pursuant to Paragraph H of Section XIX, within sixty (60) days of the anniversary of entry of this Consent Decree, Primary Settling Defendants shall submit to EPA an accounting of the Settling Defendants' Pre-Certification Future Costs incurred during the prior year. EPA will also send Settling Defendants an annual accounting of the United States' Pre-Certification Future Costs, with each accounting to be made as soon as practicable after the anniversary of the entry of this Consent Decree.

C. Within sixty (60) days of EPA Certification of Completion of Remedial Construction pursuant to Paragraph H of Section XIX of this Consent Decree, Primary Settling Defendants shall submit to EPA a final accounting of the Settling Defendants Pre-Certification Future Costs. EPA will also provide Settling Defendants with an accounting of United States' Pre-Certification Future Costs. Within sixty (60) days of Settling

Defendants' receipt of the United States' accounting, Primary Settling Defendants will notify EPA in writing of their decision to accept or dispute the United States' Pre-Certification Future Costs.

D. Within thirty (30) days of the later of (1) Settling Defendants' receipt of written EPA acceptance of Settling Defendants' Pre-Certification Future Costs submitted by Settling Defendants pursuant to Paragraph C. of this Section; (2) EPA receipt of Primary Settling Defendants' acceptance of the United States Pre-Certification Future Costs; or (3) resolution of any dispute relating to the costs noted in (1) or (2), the Settling Defendants shall reimburse EPA for all Past Costs and all United States Pre-Certification Future Costs, less the amount paid to EPA by Settling Defendants pursuant to Paragraph A. of this Section, and less seventeen and sixty-six thousand two hundred and forty-seven one hundred thousandths percent (17.66247%) of the Total Pre-Certification Costs. The dollar value of the percentage reduction in the preceding sentence shall in no event exceed the amount of Past Costs.

E. Within sixty (60) days of the entry of this Consent Decree, Settling Defendants shall escrow six million seven hundred thousand two hundred ninety-six dollars and forty-one cents (\$ 6,700,296.41) towards the full amount of Past Costs, less the amount paid to EPA pursuant to Paragraph A of this Section. These monies shall not be subject to the Dispute Resolution procedures set forth in Section XVI of this Consent Decree. Within sixty (60) days of Settling Defendants' receipt of an accounting Past Costs not previously provided by EPA, Settling Defendants shall escrow the amount of such additional Past Costs. Such additional Past Costs shall not include Past Costs incurred by EPA prior to January 1, 1990. However, in no event shall the total principal amount of Past Costs to be escrowed or paid exceed eight million two hundred thousand two hundred ninety-six dollars and forty-one cents (\$8,200,296.41.) The escrow arrangements shall be subject to EPA approval. Interest earned on the amount escrowed shall be allocated in proportion to the payment of the principal.

F. After EPA Certification of Completion of Remedial Construction pursuant to Paragraph H of Section XIX of this Consent Decree, Settling Defendants shall reimburse EPA one hundred percent (100%) for any Response Costs incurred by EPA after such certification including but not limited to (1) the review or development of plans, reports, or other items, (2) the oversight or verification of Work pursuant to this Consent Decree, and/or (3) securing access to the Site or other property to which access is necessary for the performance of the Work. EPA will send Settling Defendants a demand for payment of such costs with an appropriate accounting of the costs claimed on an annual basis, with each demand to be made as soon as practicable after the anniversary of the date of EPA Certification of Completion of Remedial Construction pursuant to Paragraph H of Section XIX of this Consent Decree. Payment shall be made by Settling Defendants within thirty (30) days of receipt of the demand for payment from EPA.

G. All payments made to EPA pursuant to this Section shall be made by certified check(s) made payable to "EPA Hazardous Substance Superfund," and referencing the Chemical Control Superfund Site and the Civil Action Number of this matter. The certified check shall be mailed to EPA Region II, Attention: Superfund Accounting, P.O.Box 36018M, Pittsburgh, PA. 15251. Copies of the check(s) any transmittal letter(s) shall be sent to the three representatives of the United States named in Section XVIII.

H. Any payments made by Settling Defendants pursuant to this Section do not constitute penalties, fines or monetary sanctions.

XV

FORCE MAJEURE EVENT(s)

A. For purposes of this Consent Decree, a force majeure shall mean any event or series of events arising from causes entirely beyond the control of Settling Defendants and of any entity controlled by Settling Defendants, including its contractors and subcontractors, which delays or prevents the performance of any obligation under this Consent Decree. A force majeure shall not include unanticipated or increased costs or expenses, financial incapacity, or non-attainment of the goals and standards set forth herein or in the ROD, the SOW, or in plans or other documents prepared by and approved pursuant to this Consent Decree.

B. When circumstances occur which may delay the completion of any phase of the Work or delay access to the Site or to any property on which any part of the Work is to be performed, whether or not caused by a force majeure, Primary Settling Defendants shall notify the EPA Project Manager orally of such circumstances within twenty-four (24) hours of their occurrence. In the event of the Project Manager's unavailability, Primary Settling Defendants shall notify the Chief of the New Jersey Compliance Branch of the Emergency and Remedial Response Division of EPA Region II. If such notification must occur after working hours, on a weekend or holiday, notification shall be provided to the EPA Region II Response and Prevention Branch in Edison, New Jersey at (201) 548-8730.

C. Within five (5) days of the event which Primary Settling Defendants contends is responsible for the delay, Primary Settling Defendants shall supply to EPA, in writing, the following: (1) an explanation of the cause of any actual or anticipated delay or noncompliance; (2) the anticipated or actual duration of such delay; (3) the measures taken and/or to be taken by Primary Settling Defendants to prevent or minimize the delay or correct the noncompliance, and (4) the timetable for implementation of such measures. Such notice shall be accompanied by all available pertinent documentation including, but not limited to, third party correspondence.

D. Failure to give timely oral and written notice to EPA in accordance with this Section shall constitute a waiver of any claim of a force majeure.

E. If Primary Settling Defendants claim and EPA agrees that a delay or noncompliance constitutes a force majeure EPA will modify the affected plans or schedules incorporated into this Consent Decree and/or other relevant documents. The modification will provide the additional time necessary to complete the specific phase of the Work and/or any succeeding phase of the Work affected by such delay. The additional time will not exceed the actual duration of the delay resulting from the force majeure, and if agreed to by the Parties, such additional time as may be necessary for the resumption of work. The issue of whether additional time is reasonably necessary for resumption of work is subject to Dispute Resolution. Any such modification of plans, schedules or other items made pursuant to this paragraph shall not be deemed a modification subject to Paragraph C in Section XXV this Decree.

F. EPA's determination that a delay in achieving any milestone established by this Consent Decree, and/or other relevant documents, is or was attributable to a force majeure shall not excuse Primary Settling Defendants' delay in achievement of a subsequent milestone unless EPA makes a written determination excusing delay on the subsequent milestone.

G. In any proceedings in connection with a dispute regarding a delay in performance or other noncompliance, Primary Settling Defendants shall have the burden of proving (1) that the delay or noncompliance is or was caused by a force majeure, (2) that the amount of additional time requested is necessary to compensate for such event, and (3) that additional time is essential with respect to a subsequent milestone.

XVI

DISPUTE RESOLUTION

A. As required by Section 121(e)(2) of CERCLA, 42 U.S.C. §9621(e)(2), the Parties to this Consent Decree shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Consent Decree and any Work required hereunder.

B. In the event that any dispute arising under this Consent Decree is not resolved through informal negotiations within thirty (30) days from the date the dispute arises, the position advanced by EPA shall be considered binding, unless within five (5) days after the thirty (30) day negotiation period ends or after receipt of written notice of EPA's position, the Primary Settling Defendants invoke the dispute resolution procedures of this Section by providing written notice to the United States and EPA. Nothing herein shall prevent Primary Settling Defendants from invoking the Dispute Resolution procedures of this Section after the end of the thirty day negotiation period prior to receipt of written notice from EPA.

C. Within ten (10) days of the service of notice of dispute pursuant to Paragraph B of this Section, the Primary Settling Defendants

shall serve on the United States a written statement of the issues in dispute. The statement shall include the relevant facts upon which the dispute is based, the factual data, analysis or opinion supporting Primary Settling Defendants' position, and all supporting documentation on which it relies ("Statement of Position"). EPA shall serve its Statement of Position, including supporting documentation, no later than ten (10) days after receipt of the Primary Settling Defendants' Statement of Position. In the event that these ten day time periods for exchange of Statements of Position would cause a delay in the Work, the periods may be shortened by agreement or to a reasonable period which cannot be less than one (1) business day after receipt of written notice by EPA.

D. An administrative record of any dispute under this Section shall be maintained by EPA. The record shall include the written notice of the dispute, the Statements of Position served pursuant to the preceding paragraphs, and any other submissions by the Parties.

E. Upon review of the administrative record, the Director of the Emergency and Remedial Response Division, EPA, Region II, shall issue a final decision and order resolving the dispute. This order shall be enforceable administratively pursuant to Section 121(e)(2) of CERCLA, subject to the rights of judicial review set forth in the following Paragraph F.

F. Until the date of termination of this Consent Decree, any decision and order of EPA pursuant to the preceding Paragraph E shall be reviewable by this Court, provided that a petition is filed with this Court within five (5) days of receipt of EPA's decision and order.

G. The filing of a notice of dispute pursuant to Paragraph B. or a petition pursuant to Paragraph F., and proceedings under either, shall not automatically extend or postpone any obligation of the Primary Settling Defendants under this Consent Decree. However, the payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Primary Settling Defendants prevail in a dispute resolution proceeding under this Section, no stipulated penalties shall be assessed concerning the matter under dispute.

H. In proceedings concerning any dispute relating to the selection, extent, or adequacy of any aspect of the Work, the Primary Settling Defendants shall have the burden of demonstrating, on the administrative record as defined in Paragraph D of this Section, that the position of EPA is arbitrary and capricious or otherwise not in accordance with law. For purposes of this Paragraph, the adequacy of the Work includes (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items relating to the SOW; and (2) the adequacy of Work performed pursuant to this Consent Decree. For any other dispute arising under this Consent Decree, the Court shall determine the appropriate standard and scope of review under applicable law. In proceedings on any dispute,

Primary Settling Defendants shall have the burden of coming forward with evidence and the burden of persuasion on factual issues.

I. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under and with respect to this Consent Decree and shall apply to all provisions of this Consent Decree. However, notwithstanding any other provision of this Section XVI, any decision by EPA to approve or agree to any additional work proposed by Primary Settling Defendants pursuant to Paragraph C of Section VII of this Consent Decree shall be final and shall not be subject to the provisions of this Section XVI.

XVII

STIPULATED PENALTIES

A. Except as provided in Section XV, Force Majeure, and the following paragraphs of this Section, in the event that Primary Settling Defendants fail to comply with any of the following requirements of this Consent Decree or SOW, the Primary Settling Defendants shall pay stipulated penalties to the Plaintiff as provided in this Section after the entry of this Consent Decree with this Court for each day they fail to comply with such requirement:

1. provision of Financial Assurance pursuant to Section XIII of this Consent Decree;

2. implementation of the Remedial Design, Remedial Construction, Operation and Maintenance of the Remedy in accordance with the SOW and this Consent Decree;

3. implementation of any additional work in accordance with any work plan submitted by Primary Settling Defendants and approved by EPA pursuant to Paragraph C of Section VII of this Consent Decree;

4. submission and, if necessary, revision and resubmission of the Site Management Plan for Pre-Design;

5. submission and, if necessary, revision and resubmission of the Remedial Design Work Plan;

6. submission and, if necessary, revision and resubmission of the Remedial Design Investigation Report;

7. submission and, if necessary, revision and resubmission of the Remedial Design Reports;

8. submission and, if necessary, revision and resubmission of the Site Management Plan for Remedial Construction;

9. submission and, if necessary, revision and resubmission of the Operation and Maintenance/Post Remediation Monitoring Plan;

10. submission and, if necessary, revision and resubmission of the Notice of Completion and Final Report for Remedial Construction; or

11. any violation pursuant to the provisions of Paragraph C of Section X of this Consent Decree relating to the submissions referenced in 4. through 10. above.

B. The Primary Settling Defendants shall pay to the United States stipulated penalties in the following amounts for each day of each violation of any requirement specified in Paragraph A of this Section:

<u>Period of Noncompliance</u>	<u>Penalty per Violation Per Day</u>
1st thru 7th day	\$ 2,000.00
8th thru 14th day	\$ 4,000.00
15th thru 29th day	\$ 7,000.00
30th thru 44th day	\$ 10,000.00
45th thru 59th day	\$ 15,000.00
60th day and beyond	\$ 25,000.00

C. The Primary Settling Defendants shall pay to the Plaintiff stipulated penalties in the amount of \$1500.00 per day for each day that the Primary Settling Defendants fail to:

1. submit the name of the Project Coordinator to EPA pursuant to Section VII of this Consent Decree;

2. comply with the reporting requirements set forth in Section IX of this Consent Decree;

3. meet any requirement for payment of EPA costs pursuant to Section XIV, stipulated penalties or interest required hereunder; or

4. are in violation of the provisions of Paragraph C of Section X of this Consent Decree not included in Paragraph A.11. of this Section.

D. The Primary Settling Defendants shall pay to the Plaintiff stipulated penalties in the amount of \$ 1,000.00 per day for each day that Primary Settling Defendants fail to meet any deadline, time limit, or scheduling milestone established under this Consent Decree not specifically referred to in Paragraphs A or C of this Section.

E. Stipulated penalties shall begin to accrue on the day that performance is due or a noncompliance occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent simultaneous accrual of separate penalties for separate violations of this Consent Decree.

F. Nothing herein shall be construed to prevent EPA from waiving imposition of all or part of any stipulated penalties.

G. All penalties due to the United States under this Section shall be payable within thirty (30) days of Settling Defendant's receipt of a notification of non-compliance by EPA and a written demand for payment. Penalties shall accrue from the date of violation regardless of whether EPA has notified Settling Defendants of a violation except that any violation pursuant to Paragraph A.11 or C.4. of this Section shall begin to accrue on the day following Settling Defendants' receipt of notice of such a violation. Interest shall begin to accrue on the unpaid balance on the first date after payment is due. In the event this Decree is not entered by the Court, Primary Settling Defendants shall have no liability to pay penalties pursuant to this Paragraph.

H. Pursuant to 31 U.S.C. §3717, interest shall accrue on any amounts overdue under this Section at a rate established by the Department of Treasury for any period of such delinquency. A handling charge shall be assessed at the end of each thirty (30) day late period, and a six (6) percent per annum penalty charge shall be assessed if the penalty is not paid within ninety (90) days of the due date.

I. Stipulated penalties due to the United States shall be paid by certified check made payable to the "Hazardous Substance Response Trust Fund" and shall contain Primary Settling Defendants' complete address, the Site name, and this civil action number. All checks shall be mailed to EPA, Region II, Attention: Superfund Accounting, P.O. Box 360188M, Pittsburgh, Pennsylvania 15251. A copy of the certified check shall be sent to the Office of Regional Counsel, EPA, Region II, 26 Federal Plaza, New York, New York 10278, Attention: Chemical Control Site Superfund Site Attorney.

J. Neither the filing of a notice nor a petition to resolve a dispute nor the payment of penalties shall alter in any way Settling Defendants' obligations under this Consent Decree.

K. No payments made under this Paragraph shall be deductible for Federal or state income tax purposes unless permitted by law.

L. The stipulated penalties due from Primary Settling Defendants in accordance with this Section shall be in addition to any other remedies, sanctions or penalties which may be available to the United States or its agencies or departments by reason of Primary Settling Defendants' failure to comply with requirements of this Consent Decree, except that the United States agrees not to seek both stipulated penalties and penalties pursuant to Section 109 of CERCLA for the same violation of this Consent Decree.

M. The Primary Settling Defendants and EPA will regularly confer with each other about the progress of the Work and problems in meeting any deadlines under this Consent Decree. Any failure to confer is not a defense to Stipulated Penalties.

N. Primary Settling Defendants may dispute whether a violation occurred, whether the violation is subject to the penalty amount of

Paragraph B, Paragraph C, or Paragraph D of this Section, and the number of days of such violation by invoking the Dispute Resolution procedures of this Consent Decree within twenty (20) days of receipt of EPA's demand for payment of stipulated penalties.

O. All penalties referred to in this Section represent collective, not individual, obligations of the Primary Settling Defendants.

XVIII

NOTICES

A. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one Party to another, or any other written communication is required, the following individuals shall be the recipients unless those individuals or their successors give written notice of a change to the other parties:

As to Settling Defendants:

Name to be provided by date of Lodging

As to the United States:

- (1) Chief, New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
26 Federal Plaza
New York, NY 10278
Attn: Chemical Control Site Attorney
- (2) Chief, New Jersey Compliance Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
26 Federal Plaza
New York, NY 10278
Attn: Chemical Control Site Project Manager
- (3) Chief, Environmental Enforcement Section
Land & Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
Attn: Chemical Control Site Attorney
90-11-2-293

B. In the event that EPA requests more than one copy of any report or other documents required by this Consent Decree, Primary Settling Defendants shall provide the number of copies requested.

C. At the request of EPA, Primary Settling Defendants shall forward to no more than one person not a party to this Consent Decree one copy of any plans, reports, or documents required by the SOW and under Section IX of this Consent Decree. The Primary Settling Defendants shall be liable for Stipulated Penalties under Paragraph D of Section XVII only if Primary Settling Defendants' failure to forward the requested documents is intentional.

XIX

GENERAL PROVISIONS

A. Access To Information

1. At all reasonable times from the date of entry of this Consent Decree to six (6) years after the termination of this Consent Decree, the Primary Settling Defendants shall allow EPA to have access to, and, upon request of EPA, Primary Settling Defendants shall provide EPA with copies of all records and documents relating to the performance of this Consent Decree.

2. Upon request by EPA, the Primary Settling Defendants shall provide EPA access to and/or copies of all records and information within the possession or control of the Primary Settling Defendants or its contractors or agents which relate to the performance of this Consent Decree. This includes, but is not limited to, all data, analyses, chain of custody records, manifests, trucking logs, contractor names, correspondence, technical information of any type, waste screening or analyses, names of all off-site facilities used for treatment or disposal of waste materials removed from the Site, permits, insurance documents, health and safety procedures and status reports. If EPA, at its option, elects to review any records relating to the Site, it shall give the Settling Defendants at least five (5) days prior notice. The Primary Settling Defendants shall thereafter make all records requested by EPA available for EPA review at a location in the State of New Jersey on any working days specified by EPA.

3. The Primary Settling Defendants shall make all reasonable efforts to make all of its contractors, agents and employees having knowledge relating to the performance of the Work under this Consent Decree available to EPA for purposes of investigation, information gathering and/or testimony.

4. Nothing in this Consent Decree shall be construed to limit EPA's right of access or right to obtain information pursuant to applicable law.

5. Information acquired or generated by Settling Defendants in performance of the Work under this Consent Decree shall not be claimed as confidential by Settling Defendants.

6. Nothing herein shall waive the Settling Defendants rights to assert any applicable work product or attorney-client privilege and to withhold documents on the basis of such privilege, consistent with the Federal Rules of Civil Procedure. Upon request by the United States, Settling Defendants shall identify in writing the documents withheld and the basis for the claim of privilege. Any dispute concerning whether a document is privileged shall be resolved in accordance with the Dispute Resolution procedures set forth in Section XVI.

B. Retention of Records

1. Primary Settling Defendants shall retain all records which ever come into their possession or control which relate to the performance of Work under this Consent Decree from the effective date of this Decree until six (6) years after the termination date of this Consent Decree. Primary Settling Defendants shall not destroy or dispose of any of these records at any time prior to six (6) years after the termination date of this Consent Decree. Notwithstanding the foregoing, the Primary Settling Defendants may, in writing, request written permission from the United States to destroy records or documents in the interim, and the United States in its discretion may grant such a request.

2. Within 90 days after entry of this Consent Decree, Primary Settling Defendants shall inform EPA, in writing, as to the name, address and phone number of the individual who will act as custodian for these records. After the six (6) year period of document retention expires, Primary Settling Defendants shall notify DOJ and EPA, in writing, at least ninety (90) days prior to any proposed destruction or disposal of any such records, and shall not destroy or dispose of any such records without the express written permission of EPA. If the United States objects or denies permission for an interim or final document destruction, the Primary Settling Defendants shall relinquish custody of the documents to EPA, and the obligations of the Primary Settling Defendants with respect to such documents shall cease.

C. Permits

1. No Federal, State or local permits shall be required for any portion of the Work conducted on the Site. However, Primary Settling Defendants shall comply with all substantive requirements of any Federal and State permits and regulations which apply to any of the Work performed at the Site, notwithstanding the fact that permits are not required. Primary Settling Defendants shall obtain all permits or approvals necessary for off-site work under Federal, State or local laws and shall submit timely applications and requests for any such permits and approvals.

2. This Consent Decree is not to be construed as, nor is it intended by the Parties to be, a permit issued pursuant to any Federal or State statute or regulation.

3. Notwithstanding approvals which may be granted by the United States, the State or other governmental entities, the Settling Defendants shall assume any and all liability arising from or relating to their acts or omissions or the acts or omissions of any of their contractors, subcontractors, or any other person acting on their behalf in the performance of the Work, or its failure to perform properly or completely the requirements of this Consent Decree.

D. Indemnification

1. The Settling Defendants shall indemnify, save and hold harmless the United States and EPA, their officials, agencies, departments, and employees, contractors, subcontractors and any persons acting on their behalf or under their control in carrying out activities pursuant to this Consent Decree, from any and all claims or causes of action arising from acts or omissions of Primary Settling Defendants and/or their representatives in carrying out the activities pursuant to this Consent Decree.

2. The Settling Defendants waive and shall indemnify and hold harmless the United States with respect to, any claims for damages or reimbursement from the United States, or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement other than this Consent Decree between the Primary Settling Defendants and any person for performance of Work on or relating to the Site, including claims on account of construction delays. In the event any such claim is made, the United States shall give notice to the Settling Defendants within sixty (60) days of receipt of such claim.

E. Contractor Insurance

1. The United States and EPA shall not be represented as a party to any contract entered into by or on behalf of the Settling Defendants for any activities related to this Decree.

2. Prior to commencing any onsite work, Primary Settling Defendants shall secure, and shall maintain for the duration of the Consent Decree, Comprehensive Automobile Liability Insurance, including bodily injury liability and property damage liability with limits of one million dollars (\$1,000,000), for each person and each occurrence; and Comprehensive General Liability Insurance which includes, but is not necessarily limited to, coverage for contractual liability property damages and bodily injury with coverage of five million dollars (\$5,000,000) combined single limit. The United States and EPA shall be named as additional insureds. In addition, for the duration of this Consent Decree, Primary Settling Defendants shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the

provision of workmen's compensation insurance for all persons performing work on behalf of in furtherance of this Consent Decree.

3. Prior to commencement of Work at the Site, the Primary Settling Defendants shall provide EPA with certificates of insurance pursuant to the requirements of Paragraph E.2. of this Section. If Primary Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, than with respect to that contractor or subcontractor Primary Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

4. In the event that Primary Settling Defendants are unable through their best efforts to obtain some or all of the Comprehensive General Liability Insurance specified in Paragraph E.2. of this Section, or can only obtain such insurance at unreasonable rates, they shall send EPA written notice of their inability to obtain the required insurance. The notice shall identify which kinds of insurance are unavailable, describe Primary Settling Defendants' efforts to obtain such insurance, and summarize the key terms, including the cost, of any insurance with Primary Settling Defendants claim to be available only at unreasonable rates. If EPA determines that Primary Settling Defendants did exercise their best efforts to obtain the required insurance and that such coverage was not available or was only available at unreasonable rates, EPA and Primary Settling Defendants may mutually agree on reasonable alternative coverage, including alternative financial assurance.

F. Notice to Contractors

1. The Primary Settling Defendants shall provide a copy of this Consent Decree to every contractor and subcontractor hired to perform any of the Work required by this Consent Decree. The Primary Settling Defendants shall require that all such contractors and subcontractors perform their work in conformity with the terms of the ROD, this Consent Decree, the SOW attached to this Decree and all applicable Federal and State laws and regulations.

G. Confidentiality Claims

1. The Settling Defendants agrees not to assert a claim of confidentiality or any other privilege with regard to any of the following:

a. Any information referred to in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. 9704(e)(7)(F);

b. Any data relating to the chemical, physical, morphological, hydrological, geologic or environmental characteristics of the soil, groundwater, atmosphere or Waste Materials collected at the Site by the Settling Defendants;

c. Any information relating to the names and professional qualifications of any agents or contractors who perform any of the Work for the Settling Defendants; and

d. Any information obtained at the Site relating to the identity of any potentially responsible parties for the Site, including any information which may indicate that Waste Material from the Settling Defendants may exist at the Site.

2. The Settling Defendants may assert a claim for business confidentiality for any information and documents submitted to EPA other than those described in Paragraph G.1., above. EPA shall make a determination as to the confidentiality of such information pursuant to the procedures set forth in 40 C.F.R. Part 2 and shall notify the Settling Defendants in accordance with the procedures established therein.

3. EPA may release any documents to the public without further notice to the Settling Defendants if (a) the Settling Defendants fail to make a claim of confidentiality for any documents submitted to EPA, or (b) EPA determines that any documents are not entitled to be treated as confidential business information and so notifies the Settling Defendants pursuant to the provisions of 40 C.F.R. Part 2.

H. Certification of Completion of Remedial Construction

1. Within thirty (30) days of completion of all Remedial Construction activities required by this Decree, Primary Settling Defendants shall submit to EPA a written report prepared and signed by a licensed Professional Engineer. This report shall certify that the Remedial Construction activities have been completed in full satisfaction of the requirements of this Consent Decree.

2. EPA will determine whether the Remedial Construction activities or any portion(s) thereof have been completed in accordance with the standards and specifications set forth in this Consent Decree, the ROD, the Final Design Report required by the SOW, the SOW and any additional reports which may relate to this Consent Decree. If not, EPA shall notify Settling Defendants in writing of those tasks which must be performed to complete the Remedial Construction. Primary Settling Defendants shall then implement the specified activities and tasks in accordance with the specifications and schedules established by EPA.

3. After EPA determines that all Remedial Construction activities required by this Decree have been fully completed by Primary Settling Defendants, EPA shall so certify in writing.

I. Certification of Completion of the Work

1. Within thirty (30) days of completion of all Work required by this Decree, Primary Settling Defendants shall submit to EPA a written report prepared and signed by a licensed Professional Engineer. This

report shall certify that the Work has been completed in full satisfaction of the requirements of this Consent Decree.

2. EPA will determine whether the Work or any portion thereof has been completed in accordance with the standards and specifications set forth in this Consent Decree, the ROD, the Final Design Report required by the SOW, the SOW and any additional reports which may relate to this Consent Decree. If not, EPA shall notify Settling Defendants in writing of those tasks which must be performed to complete the Work. Primary Settling Defendants shall then implement the specified activities and tasks in accordance with the specifications and schedules established by EPA.

3. After EPA determines that the Work required by this Decree has been fully completed by Primary Settling Defendants, EPA shall so certify in writing. This certification shall constitute the Certification of Completion of the Work for purposes of this Consent Decree.

4. No portion of any Work performed pursuant to this Consent Decree shall be deemed completed until it has been reviewed by EPA and EPA has certified in writing that it has been completed.

J. Community Relations

1. Primary Settling Defendants shall cooperate with EPA in providing information regarding the Work to the public. As requested and upon adequate notice by EPA, Primary Settling Defendants shall participate in the preparation of this information for dissemination to the public and shall participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

K. Pre-Authorization

1. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §9611 or 40 C.F.R. §300.700(d), or any amendments thereto.

L. Off-Site Management of Waste Materials

1. All off-site transportation, treatment, storage or disposal of Waste Materials removed from the Site by Primary Settling Defendants shall be in compliance with Section 121(d) (3) of CERCLA, 42 U.S.C. §9621(d)(3). Primary Settling Defendants shall be responsible for compliance with all applicable requirements relating to off-site waste management under RCRA and N.J.A.C. 7:26-1.1 et seq., including the standards for generators and transporters of hazardous waste promulgated under 40 C.F.R. Parts 262 and 263. Primary Settling Defendants shall also use and sign manifest forms for all hazardous wastes transported from the Site. Primary Settling Defendants shall also designate all destination facilities they propose to use for such off-site transfer, storage, treatment or disposal in the Site Management Plan for Remedial Construction which is required by the SOW. Primary Settling Defendants shall conduct off-site disposal activities in conformance with the NCP and any amendments thereto, and the Revised

Procedures for Planning and Implementing Off-Site Response Actions, EPA Office of Solid Waste and Emergency Response, November 13, 1987, and any amendments thereto.

2. All disposal of Waste Material conducted by or for the Primary Settling Defendants pursuant to performing any of the Work under this Consent Decree shall comply with all provisions of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601 et seq., all regulations promulgated pursuant to both RCRA and TSCA and all applicable state laws and regulations.

M. Admissibility of Data

1. In the event that the Court is called upon to resolve a dispute concerning implementation of this Consent Decree, the Settling Parties waive all evidentiary objections to the admissibility into evidence of all validated data (which are acceptable pursuant to the QA/QC Plan) gathered, generated, or evaluated pursuant to this Consent Decree.

N. Endangerment and Future Responses

1. If any action or occurrence during the performance of the Work causes or threatens to cause an unauthorized release of a Waste Material which may present an imminent and substantial endangerment to the public health or welfare or the environment, Primary Settling Defendants shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment. Primary Settling Defendants shall also immediately notify the EPA Project Manager or, in the event of his or her unavailability, the EPA Response and Prevention Branch in Edison, New Jersey at (201) 548-8730.

2. If Primary Settling Defendants fail to take appropriate action pursuant to Paragraph N.1. of this Section in response to a release of Waste Material at the Site, and EPA takes such response action, Primary Settling Defendants shall reimburse EPA for the cost of such response action in accordance with the terms set forth in this Consent Decree. If EPA response action is required pursuant to this Paragraph N.2. solely as a result of Primary Settling Defendants' negligence, the cost of EPA's response shall not be included in Total Pre-Certification Costs and the Settling Defendants shall be responsible for 100% of the costs of EPA undertaking such action. Payment of such response costs shall be mailed to the address stated in Section XIV of this Consent Decree as applicable, within thirty (30) days of Settling Defendants' receipt of a demand for payment and an accounting of the costs incurred.

3. Nothing in this Section shall be deemed to limit the power and authority of EPA or this Court to take, direct or order all appropriate action to protect human health and/or the environment or to prevent, abate, or minimize any actual or threatened release of hazardous substances at or from the Site.

O. EPA Periodic Review to Assure Protection of Human Health and Environment

1. As required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA shall review the remedial action at the Site not less often than each five (5) years after initiation of the remedial action to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review, EPA determines that further response action in accordance with Section 104 or 106 is appropriate at the Site, then subject to Section XXI of this Consent Decree, Covenant Not to Sue, EPA may take or require such action in a subsequent administrative or judicial proceeding. Further, if appropriate pursuant to Paragraph C of Section VII of this Consent Decree, Additional Work, EPA may require Primary Settling Defendants to undertake such action.

2. Upon completion of its review pursuant to this paragraph, EPA shall notify Settling Defendants of its determination in writing.

P. Miscellaneous Provisions

1. The execution of this Consent Decree is not an admission of liability by Settling Defendants with respect to any matter relating to this Consent Decree nor is it an admission or denial of the factual allegations set out in the Complaint.

2. This Consent Decree was negotiated at arms length and executed by the Parties in good faith to avoid further expensive protracted litigation and is a settlement of claims which were vigorously contested, denied, and disputed as to validity, liability and amount. The Plaintiff and the Settling Defendants agree that neither this Consent Decree, nor any part hereof, nor the entry into, nor any performance under this Consent Decree by any of the Settling Defendants shall be construed as a finding or admission or acknowledgement of the factual or legal allegations contained in this Consent Decree or in the Complaint, or of any liability, fault or wrongdoing, or evidence of such, or an admission of violation of any law, rule, regulation, or policy, by any Settling Defendant or by its officers, directors, employees, agents, successors or assigns, nor shall this Consent Decree nor any performance hereunder by any of the Settling Defendants create any rights on behalf of any other person not a party hereto. Each of the Settling Defendants expressly reserves any and all rights (including any right to contribution), defenses, claims, demands, and causes of action which each of them may have with respect to any matter, action, event, claim or proceeding relating in any way to the Chemical Control Site against any person other than the Plaintiff, except as expressly provided in this Consent Decree. Settling Defendants individually and collectively, do not admit, accept, concede, or acknowledge the determinations, allegations, findings of fact, if any, and conclusions in this Consent Decree or in the Complaint filed in this action and specifically reserve the right to contest any such determinations, allegations, findings, except in any proceeding to enforce Settling Defendants' obligations pursuant to

this Consent Decree, or except as otherwise provided in this Consent Decree.

3. All reports, EPA approved work plans and other writings required under the terms of this Consent Decree shall, upon approval by EPA, be deemed incorporated into this Consent Decree and may be enforced as any other provision in this Consent Decree.

4. No informal advice, guidance, suggestions or comments by EPA officials shall relieve Settling Defendants of any of their obligations under this Consent Decree.

5. All work conducted pursuant to this Consent Decree shall be performed in accordance with prevailing professional standards.

6. Nothing contained in this Consent Decree shall affect the right of EPA to enter into any Consent Decree, to issue any Consent Order or to issue any other orders unilaterally to any responsible party for the Site other than Settling Defendants pursuant to CERCLA, or to require the performance of any additional response actions which EPA determines are necessary for the Site.

7. Nothing contained in this Consent Decree shall act as a bar to, a release of, a satisfaction of, or a waiver of any claim or cause of action which EPA or the United States has at present or which EPA or the United States may have in the future against any entity, including Settling Defendants, on anything which is not a Covered Matter under Section XX of this Consent Decree and which relates to the Site.

8. Nothing contained in this Consent Decree shall be construed to mean that the Settling Defendants are the only potentially responsible party with respect to the release and threatened release of hazardous substances at the Site.

9. Nothing contained in this Consent Decree shall affect any right, claim, interest, defense or cause of action of EPA, the United States or the Settling Defendants with respect to any entity which is not a party to this Consent Decree.

10. No person who is not a party to this Consent Decree shall have any rights or benefits under this Consent Decree.

Q. Non-Volumetric Settling Defendants

Included within the Settling Defendants listed in Exhibit A or B to this Consent Decree are those Parties for whom EPA, as of the date of lodging of this Consent Decree, has not established a specific waste volume connection to the Site. These Non-Volumetric Settling Defendants are listed in Exhibit C to this Consent Decree. For settlement purposes only and without admission of any liability, the Parties to this Consent Decree have agreed to assign to each Non-Volumetric Settling Defendant a volumetric percent of four hundred and seventeen one hundred thousandths of

a percent (0.00417%). This four hundred and seventeen one hundred thousandths of a percent (0.00417%) represents each Non-Volumetric Settling Defendant's individual contribution towards the eighty two and thirty-three thousand seven hundred and fifty-three one hundred thousandths percent (82.33753%) total volumetric participation of all Settling Defendants executing this Consent Decree, which total volumetric participation is utilized to calculate the percentage reduction pursuant to Paragraph D of Section XIV of this Consent Decree. Notwithstanding Section XXI, Covenant Not to Sue, and Section XXIII Reservation of Rights, EPA reserves the right to seek further relief from a respective Non-Volumetric Settling Defendant in the event EPA discovers information establishing that such Settling Defendant is responsible for waste sent to the Site in an amount greater than the aforesaid volumetric percentage.

XX

COVERED MATTERS

A. Covered Matters shall include any and all civil and administrative claims available under Sections 106 and 107 of CERCLA, 42 U.S.C. §§9606 and 9607, and Section 7003 of SWDA, 42 U.S.C. §6973 provided any such claims arise from the facts surrounding the transactions or occurrences with respect to the Site.

B. Covered Matters shall not include any of the following:

1. Liability relating to any remedial actions which are the subject of any record of decision issued by EPA after September 23, 1987 other than amendments contemplated by the mutual agreement pursuant to Paragraph C of Section VII of this Consent Decree, or
2. Liability arising from waste material removed from the Site, or
3. Liability for injury to, destruction of or loss of natural resources, or
4. Claims based on criminal liability, or
5. Claims based on a failure by the Settling Defendants to meet the requirements of this Consent Decree, or
6. Liability for any violation of Federal or State law which occurs during performance of any Work under this Consent Decree, or
7. Liability that arises from acts, events or omissions after the date of entry of this Consent Decree, or
8. Liability for any costs incurred by the Agency for Toxic Substances and Disease Registry relating to the Site, or

9. Any Future Liability.

XXI

COVENANT NOT TO SUE

A. In consideration of actions which shall be performed and payments which shall be made by the Settling Defendants under the terms of this Consent Decree, and except as otherwise specifically provided in this Consent Decree, the United States covenants not to sue or take any administrative action against the Settling Defendants or their officers, directors, employees, or agents, in their capacities as representative of Settling Defendants, for Covered Matters.

B. This covenant not to sue does not pertain to any matters other than those expressly specified as Covered Matters.

C. This Covenant Not to Sue shall take effect 1) as to the construction of the Remedy, after certification by EPA of the completion of the Remedial Construction pursuant to Paragraph H of Section XIX of this Consent Decree; 2) as to Past Costs, after full payment to EPA is made pursuant to Paragraph E. of Section XIV of this Consent Decree; and (3) as to Operation and Maintenance, after a written determination by EPA that no further Operation and Maintenance is required.

D. The United States hereby covenants not to sue the Settling Defendants for prior EPA response costs relating to the gas cylinders which were removed from the Site. Notwithstanding the covenant in this paragraph, the United States reserves its rights to seek those response costs relating to the gas cylinders from those Settling Defendants who sent gas cylinders to the Site for treatment and/or disposal.

E. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person or entity.

XXII

CONTRIBUTION PROTECTION

A. Settling Defendants are entitled to protection from contribution claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), with respect to any claim for Covered Matters as defined in Section XX of this Consent Decree, relating to the Site that is asserted or may be asserted by a party not a signatory to this Consent Decree against a Settling Defendant.

B. The Court expressly finds that the settlement reached with the Settling Defendants was at arms' length and is in good faith, is a fair settlement of the liability of the Settling Defendants and is in the public interest. Pursuant to Section 113(f)(2) of CERCLA 42 U.S.C. §9613(f)(2),

the consideration provided by the Settling Defendants pursuant to this Consent Decree shall reduce the potential liability to the United States of potentially responsible parties not subject to this Consent Decree with respect to the Site. This settlement in no way reduces the potential liability of potentially responsible parties not subject to this Consent Decree to the Settling Defendants.

C. The Court bars all contribution claims for Covered Matters against any Settling Defendant asserted by another Settling Defendant, except claims relating to failure of a Settling Defendant to meet its obligations pursuant to the Settling Defendants' Internal Agreement. Nothing contained herein shall prevent any Settling Defendant from pursuing a claim against another Settling Defendant for a contractual right of indemnification in an appropriate court.

D. Settling Defendants further retain and reserve the right to assert claims against other Settling Defendants to enforce Settling Defendants' Internal Agreement.

E. The Court shall retain jurisdiction to enforce any claim arising under Settling Defendants' Internal Agreement which claims may be enforced by summary motion.

XXIII

RESERVATION OF RIGHTS

A. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

B. Pre-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves the right to institute proceedings in this action or in a new judicial or administrative action seeking to compel Settling Defendants to (1) perform additional work or additional response actions at the Site, or (2) reimburse the United States for Response Costs if, prior to Certification of Completion of the Work:

1. Conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or

2. Information is received, in whole or in part, after the entry of this Consent Decree, and the EPA Administrator or his or her delegate finds, based on these previously unknown conditions and this information, together with any other relevant information, that the Work is not protective of human health and the environment.

C. Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves the right to institute proceedings in this action or in a new judicial or administrative action seeking to compel Settling Defendants to (1) perform additional work

or additional response actions at the Site, or (2) reimburse the United States for response costs if, subsequent to certification of completion of the Work:

1. Conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or

2. Information is received, in whole or in part, after the certification of completion, and the EPA Administrator or his or her delegate finds, based on these previously unknown conditions and this information together with any other relevant information, that the Work is not protective of human health and the environment.

D. General reservation of rights. Except as otherwise provided in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including, but not limited to:

1. All matters which are not Covered Matters, as that term is defined in Section XX;

2. Any matter as to which the United States is owed indemnification, and

3. Liability for third party claims asserted against the United States or EPA.

E. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site. EPA expressly reserves the right to institute an enforcement action and to sue any person other than Settling Defendants in connection with the Site.

XXIV

COVENANTS BY SETTLING DEFENDANTS

A. Settling Defendants covenant that they shall comply with all the terms in and meet all of their obligations under this Consent Decree, including performing all the Work required in this Consent Decree and in the SOW.

B. Except as provided in Section XVI, Dispute Resolution, Settling Defendants hereby covenant not to sue the United States for any claims related to or arising from the Work or this Consent Decree.

C. Settling Defendants covenant not to make any claims whether direct or indirect for reimbursement from the Fund for any costs incurred pursuant to this Consent Decree

ADMINISTRATIVE PROVISIONS RELATING TO CONSENT DECREEA. Lodging of Decree

1. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

B. Effective Date

1. The effective date of this Consent Decree shall be the date this Consent Decree is entered by the Court.

2. Notwithstanding Paragraph C.1., above, starting seven (7) days after the lodging of this Consent Decree, each Party, to the extent applicable to it, shall comply (except as expressly provided elsewhere in this Decree) with the following provisions of this Decree: Paragraph A.4.e. of Section VII, Paragraph B. of Section VII, Paragraph A of Section VIII, Section IX, Section X, Section XI, Section XII, Section XV, Section XVI, Section XVII, Section XVIII and Section XIX.

C. Modifications to Decree

1. No modification shall be made to this Consent Decree without written notification to and written approval of all Parties to this Consent Decree, which shall set forth the nature of and reasons for the requested modification. Nothing in this Section shall be deemed to alter the Court's power to enforce this Consent Decree.

2. No oral modification of this Consent Decree shall be effective.

D. Termination Date

1. This Consent Decree may not be terminated until after EPA issues in writing its Certification of Completion of the Work pursuant to Paragraph I in Section XIX of this Consent Decree. A Motion for Termination may be made by any Party. Termination of this Consent Decree shall not affect any of the provisions stated in any of the following Sections in this Consent Decree:

- a. Section XX;
- b. Section XXI;

- c. Section XXII;
- d. Section XXIII; and
- e. Section XXIV.

All provisions and covenants contained in each of the five (5) Sections listed above shall not be affected by and shall survive any termination of this Consent Decree pursuant to the issuance of the Certification of Completion of the Work by EPA. Termination of this Consent Decree shall not affect any continuing obligation of Settling Defendants under this Consent Decree.

XXVI

RETENTION OF JURISDICTION

The Court shall retain jurisdiction for the purpose of enabling any of the Parties to (1) apply to this Court at any time for any further order, direction and relief as needed for the interpretation or modification of this Consent Decree, (2) effectuate or enforce compliance with its terms, (3) resolve disputes in accordance with Section XIV, or (4) enforce the Settling Defendants' Internal Agreement. It is the intention of the parties that enforcement of the Settling Defendants' Internal Agreement will not interfere with the expeditious resolution of matters relating to implementation of this Consent Decree referred to this Court by Plaintiff.

XXVII

AUTHORITY TO EXECUTE CONSENT DECREE

Each undersigned representative of each Party to the Consent Decree certifies that he (or she) is fully authorized by the Party he (or she) represents to agree to the terms and conditions of the Consent Decree on behalf of that Party, to execute this Consent Decree, and to legally bind that Party to all of the terms and conditions of this Consent Decree.

XVIII

SIGNATURES

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Chemical Control Site .

SO ORDERED THIS _____ DAY OF _____, 1998

United States District Judge

By the signature of its representative, each Party hereby agrees to be bound by all the terms and provisions in this Consent Decree.

FOR: UNITED STATES OF AMERICA

By: Richard B. Stewart
RICHARD B. STEWART
Assistant Attorney General
Land & Natural Resources Division
U.S. Department of Justice
Washington, D.C.

Date: 9.20.90

By: Jonathan Marks
JONATHAN MARKS
Environmental Enforcement Section
U.S. Department of Justice
Washington, D.C.

Date: 9/20/90

By: Constantine Sidamon-Eristoff
CONSTANTINE SIDAMON-ERISTOFF
Regional Administrator
U.S. Environmental Protection Agency
Region II

Date: 9/14/90

By: Joseph McVeigh
JOSEPH McVEIGH
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region II

Date: September 13, 1990

By: Evans Stamatakis
EVANS STAMATAKY
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region II

Date: September 13, 1990